

APPEAL NO. 040746
FILED MAY 17, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 4, 2004. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the second quarter. The appellant (carrier) appealed, arguing that the SIBs determination is not supported by the evidence and, in the alternative, is against the great weight and preponderance of the evidence. The claimant responded to the carrier's appeal, urging affirmance.

DECISION

Affirmed.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule criteria for SIBs. At issue in this case was whether the claimant had earned less than 80% of his average weekly wage as a direct result of his impairment, as required by Section 408.142(a)(2) and Rule 130.102(b)(1), and whether the claimant met the good faith job search requirements of Section 408.142(a)(4) by meeting the requirement of Rule 130.102(d)(1). The parties stipulated that the carrier accepted liability for the _____, injury to the claimant; that the claimant had an impairment rating of 15% or greater from the _____, injury; and that the claimant did not elect to commute any portion of his income impairment benefits. The qualifying period for the SIBs quarter in dispute ran from August 13 through November 11, 2003.

Rule 130.102(b)(1) requires that the claimant must establish that his unemployment is "a direct result of the impairment from the compensable injury." The claimant testified, and is supported by medical evidence, that he was restricted to working four hours a day with a 20-pound lifting restriction. The hearing officer was persuaded by the claimant's testimony and medical evidence that the claimant met the direct result requirement of Rule 130.102(b)(1).

Rule 130.102(d)(1) provides that a good faith effort has been made if the employee "has returned to work in a position which is relatively equal to the injured employee's ability to work." Whether the claimant returned to work in a position relatively equal to his ability to work was a factual question for the hearing officer to resolve. The hearing officer determined that the claimant had satisfied the good faith requirement in the qualifying period for the second quarter in accordance with Rule 130.102(d)(1).

The hearing officer's determination that the claimant is entitled to SIBs for the second quarter is supported by sufficient evidence and it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v.

Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **ARCH INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Daniel R. Barry
Appeals Judge